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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

WEYERHAEUSER COMPANY,)	
)	
Appellant,)	
)	PCHB Nos. 86-219 & 87-49
v.)	
)	
PUGET SOUND AIR POLLUTION)	FINAL FINDINGS OF FACT,
CONTROL AGENCY,)	CONCLUSIONS OF LAW
)	AND ORDER
Respondent.)	

THESE MATTERS are the appeals of two \$400 civil penalties for alleged opacity exceedances on August 26, 1986 (Civil Penalty No. 6017, our No. PCHB 86-219), and on December 3, 1986 (Civil Penalty No. 6617, our No. PCHB 87-49), in alleged violation of WAC 173-400-040(10). The two appeals were consolidated. A formal hearing was held before the Pollution Control Hearings Board, Lawrence J. Faulk, Chairman and Presiding, Members Wick Dufford and Judith A. Bendor, on April 3, 1987, at the Board's offices in Lacey, Washington.

Appellant Weyerhaeuser Company was represented by its Attorneys, Susan L. Preston and Michael Thorp. Respondent Puget Sound Air Pollution Control Agency ("PSAPCA") was represented by its Attorney

1 Keith D. McGoffin. Betty Koharski of Gene Barker & Associates
2 recorded the proceedings.

3 Witnesses were sworn and testified. Exhibits were examined.
4 Argument was made. From the testimony, evidence and contentions of
5 the parties, the Board makes these

6 FINDINGS OF FACT

7 I

8 Appellant Weyerhaeuser Company is a corporation, doing business in
9 the State of Washington. It owns and operates a kraft paper mill in
10 Everett, Washington.

11 II

12 Respondent PSAPCA is an activated air pollution authority with
13 responsibility for carrying out a program of air pollution prevention
14 and control under the Washington Clean Air Act.

15 III

16 By the adoption of statewide standards for kraft pulping mills,
17 the State Department of Ecology assumed jurisdiction over such mills
18 and established separate emission standards for them. (See WAC
19 173-405-012(1)). Thereafter, the State delegated to PSAPCA, (Order of
20 Delegation No. 75-49), among other matters, the authority to
21 investigate and enforce State air standards for opacity at kraft
22 mills. The relevant standard is set forth in WAC 173-405-040(10)
23 which prohibits any person (including a corporation) from causing or
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1 allowing emissions from any kraft recovery furnace, smelt dissolver
2 tank or line kiln which has an average opacity greater than 35% for
3 more than six consecutive minutes within a one hour period.

4 Opacity is defined in the regulations as:

5 the degree to which an object seen through a plume is
6 obscured, stated as a percentage. WAC 173-405-021(16).

7 Standardized procedures have been developed to observe plumes and
8 determine their opacity. Such procedures call for the inspector's
9 observing the plume approximately perpendicular to it, and with the sun
10 within a 140 degree sector behind him/her. It is undisputed that the
11 opacity standard is violated by readings exceeding 35% for the
12 prescribed time only when the proper observation procedures were
13 followed.

14 IV

15 The Department of Ecology conducts Plume Evaluation and
16 Certification courses, which the PSAPCA inspector who made the
17 observations at issue has taken and successfully completed numerous
18 times in his eight years as an air pollution inspector. Nearest to
19 the events in question, he passed the test for both black and white
20 smoke on August 8, 1986, and on October 3, 1986. The training courses
21 have included instruction on recognizing the difference between wet and
22 dry plumes and on reading opacity at points where the reading does not
23 reflect the observation of vapor.

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V

On August 26, 1986 the PSAPCA inspector drove to the vicinity of Weyerhaeuser's Everett plant. At 11:35 Pacific Daylight Time (10:35 Pacific Standard Time), the inspector positioned himself approximately 1,200 feet south of the plant, at Medora Way near Skyline Drive in Everett. His contemporaneous notes show the wind from the north. His recollection later changed, and he testified to wind from the northwest. He observed a brownish plume emanating from the main stack (subject to the 35% opacity standard). The sky was blue and clear. At 11:48 a.m. PDT the inspector took two photographs of the plume. Then he recorded an opacity of 50% for twelve minutes between 11:48 a.m. and 12:00 p.m.

VI

As a result of the observations on August 26, PSAPCA sent appellant Notice of Violation (No. 022251) and thereafter, Notice and Order of Civil Penalty (No. 6577) assessing \$400 for the alleged violation of WAC 173-405-040(10). Feeling aggrieved by this decision, appellant appealed to this Board on December 10, 1986 and the appeal became our PCHB No. 86-219.

VII

Upon evaluating all the evidence, we find that the inspector's opacity reading on August 26, did not follow the standard procedures. The plume was drifting toward him to such an extent that it cannot be

1 said that it was approximately perpendicular to his line of
2 observation. Further, we were not convinced that the sun was with the
3 140 degree sector to his back.

4 VIII

5 On December 3, 1986, at about 12:33 p.m. (PDT), respondent's
6 inspector, driving south on Freeway I-5, noticed a plume rising from
7 the same plant, emanating again from the main stack. The inspector
8 drove to a location 1,200 feet from the plant and placed himself
9 perpendicular to the direction of the plume. The sun was within the
10 140 degree sector behind him. The wind was calm. The tan dense plume
11 rose several hundred feet into the air. The sky was primarily blue,
12 with a high thin layer of white clouds. The inspector recorded
13 opacities ranging from 60% to 70% for a fifteen minute period from
14 12:33 p.m. through 12:47 p.m. At 12:33 p.m. the inspector took two
15 photographs which clearly show the plume.

16 IX

17 As a result of the December 3, 1986 observation, respondent PSAPCA
18 issued Notice of Violation (No. 022271), and sent a Notice and Order of
19 Civil Penalty (No. 6617) assessing \$400 for the alleged violation of
20 WAC 173-405-040(10). Feeling aggrieved by this decision appellant
21 appealed to this Board on March 2, 1987 and the appeal became our
22 number PCHB NO. 87-49.

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1 X

2 We are convinced by a preponderance of the evidence that the
3 observation of opacity on December 3 followed the proper procedures in
4 deriving the readings taken.

5 XI

6 Appellant asserts that the inspector's readings on both August 26
7 and December 3, 1986, probably included moisture in the plume. We find
8 to the contrary. In both cases the plume appeared brownish or tan in
9 color, not white. Moreover, the inspector credibly explained his
10 efforts to avoid reading water vapor in the plumes.

11 We find appellant's evidence, involving non-contemporaneous
12 observations from photographs, regarding possible moisture in the
13 plumes to be unpersuasive.

14 XII

15 Appellant measures mass emissions (primarily particles) by
16 continuous monitoring equipment in its main stack. Efforts have been
17 made at various times to correlate this measurements with visual
18 opacity readings. Using these conditions, the company's witnesses were
19 of the opinion that the opacity at the times in question should have
20 been below the 35% standard.

21 No opacity, readings were taken by company personnel at the same
22 times when visual observations were being made by PSAPCA's inspector.
23 We do not find inferences from correlations derived on other occasions
24 sufficiently compelling to overcome the evidence of direct visual
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1 observations by a trained observer using proper observation techniques.

2 XIII

3 Any Conclusion of Law which should be deemed a Finding of Fact is
4 hereby adopted as such.

5 From these Findings the Board comes to the following

6 CONCLUSIONS OF LAW

7 I

8 The Board has jurisdiction over the persons and the subject matter
9 of this proceeding. RCW 43.21B.110.

10 II

11 Respondent has the burden of proving that the violations occurred.

12 III

13 We conclude that respondent PSAPCA failed to sustain its burden
14 regarding the alleged violation on August 26, 1986. (PCHB No.
15 86-219). Therefore, that penalty must be reversed.

16 IV

17 We conclude respondent did sustain its burden regarding the alleged
18 violation of December 3, 1986. (PCHB No. 87-49). An opacity emission
19 violation of WAC 173-405-040(10) did occur on that date.

20 V

21 Appellant's assertions about readings of moisture misconceive the
22 nature of the opacity standard. The standard does not apply

23 when the presence of uncombined water is the only reason
24 for the opacity of the plume to exceed the applicable
25 maximum. WAC 173-405-040(10). (Emphasis added.)

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(7)

1 For the uncombined water exception to apply, the emissions must be
2 free of all particulate contaminants. Chemithon Corp. v. PSAPCA, 19
3 Wn. App. 689, 577 P.2d 606 (1978); Chemithon II, 31 Wn. App. Wn. App.
4 276 (1982). The burden of establishing this defense is on the
5 appellant. Such was not established here. Indeed, the mass emissions
6 data shows the opposite.
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ORDER

Notice and Order of Civil Penalty No. 6577 is REVERSED. Notice and Order of Civil Penalty No. 6617 is AFFIRMED.

DONE at Lacey, Washington this 29th day of June, 1988.

POLLUTION CONTROL HEARINGS BOARD

 6/29/88
LAWRENCE S. FAULK, Presiding


WICK DUFFORD, Chairman


JUDITH A. BENDOR, Member

FINAL FINDINGS OF FACT,
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